IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
MAY 31, 2007 Session

ELTON W. HUNT, ET UX. v. CYNTHIA JUNE TWISDALE

Direct Appeal from the Chancery Court for Humphreys County
No. CH-04-104 George Sexton, Chancellor

No. M2006-01870-COA-R3-CV - Filed September 28, 2007

This appeal involves a sale of the equipment and inventory of a wine and liquor store. The buyers had little to no experience in the liquor business, but they trusted the seller because she was their friend and their son-in-law's mother. According to the buyers, they had agreed to purchase the inventory at cost basis and to pay $10,000 for the equipment. The seller reviewed the inventory and told them that its cost was $60,000. The buyers executed a promissory note for $70,000. The buyers opened their own wine and liquor store and soon discovered that the cost of the inventory they bought from the seller was only $30,000. They notified the seller of the discrepancy and ultimately filed this suit seeking reformation of the contract for mutual mistake and/or fraud. The trial court admitted parol evidence of the agreement and found by clear and convincing evidence that the parties were mutually mistaken as to the amount of inventory that the seller owned. The court reformed the contract to reflect the true cost of the inventory. The trial court also denied the seller's request for attorney's fees. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which HOLLY M. KIRBY, J., and DONALD P.HARRIS, SR. J. , joined.

T. Holland McKinnie, Franklin, TN, for Appellant

Terry J. Leonard, Camden, TN, for Appellees

OPINION

I. FACTS & PROCEDURAL HISTORY

On July 28, 2003, Elton and Sheila Hunt bought the inventory and equipment of "C.J. Wines and Liquors" from the store owner, Cynthia June Twisdale. Mrs. Twisdale had operated the business for approximately seventeen years, but it had been unprofitable in the past few years, and she wanted out of the business. Mrs. Hunt's daughter, Devon, was married to Mrs. Twisdale's son, and the parties had known each other for years. Mrs. Hunt had also worked at C.J. Wines and Liquors part-time for approximately three months as a cashier, but she had no other experience in the liquor business. Mr. Hunt was retired and had never worked in the liquor business.

In May or June of 2003, the Hunts had a discussion with Mrs. Twisdale at her home about buying the store's inventory and equipment. Mrs. Twisdale estimated that there was usually between $50,000 and $60,000 in inventory in the store, but she said that it varied depending upon the time of year. The equipment to be sold included a cooler, a freezer, a counter and computer-cash register, a credit card machine, and shelves. According to the Hunts, they offered to pay Mrs. Twisdale the inventory cost plus $10,000 for the equipment. Within a day or two after the discussion, Mrs. Twisdale contacted the Hunts and agreed to the sale. The Hunts obtained all the necessary paperwork from the State of Tennessee Alcoholic Beverage Commission to open their own store, "Hunt's Riverside Wines and Liquors." The application submitted to the Commission stated that the Hunts were purchasing the stock of a current licensee, and that the purchase price and terms were "10K + Inv. Cost." After the Hunts obtained their license, Mrs. Twisdale closed her store and inventoried the amount of stock that was being sold to the Hunts. Her inventory took approximately three hours. The Hunts claim that Mrs. Twisdale again told them that the inventory amounted to $60,000. The Hunts then executed a promissory note to Mrs. Twisdale for $70,000, and they moved the equipment and inventory to their new store.

The Hunts employed Ms. Martha Proctor, a bookkeeper and income tax practitioner with their insurance carrier, to balance their monthly books, make sure that bills were current, and handle their tax returns. At the end of 2003, she totaled the store's purchases and the sales made since the store opened in order to calculate how much inventory the store had on hand. The Hunts provided her with a complete list of all the inventory that was in the store and its original cost and retail price. The accountant determined that when the store opened, there was only $30,500.16 in beginning inventory, which was purchased from Mrs. Twisdale. The Hunts then contacted Mrs. Twisdale and informed her that the cost of the inventory she sold them was much less than she had represented. The Hunts asked Mrs. Twisdale for her records of the inventory she performed, but Mrs. Twisdale never provided them with any details of the inventory.

The Hunts filed this lawsuit against Mrs. Twisdale on April 16, 2004. They claimed that they had agreed to purchase Mrs. Twisdale's inventory at cost basis, and they agreed to pay $10,000 for the equipment. According to the complaint, after Mrs. Twisdale surveyed her inventory of wines and liquors, she calculated its cost at $60,000. They claimed that they trusted Mrs. Twisdale and so

they agreed to pay the total purchase price of $70,000. The Hunts alleged that there was a mutual mistake between the parties because Mrs. Twisdale had incorrectly calculated the cost of the inventory, and they asked that the court reform their contract to reflect the true amount of their agreement. In the alternative, they claimed that if Mrs. Twisdale intentionally miscalculated the cost of the inventory, she had committed fraud. The Hunts also alleged that such fraud would violate the Tennessee Consumer Protection Act.

Mrs. Twisdale filed an answer denying the allegations of mutual mistake and fraud. She also filed a counterclaim asserting that when the Hunts executed the $70,000 promissory note, they had agreed to provide a deed of trust on their residence as security for the note, which they had failed to do. She claimed that she was entitled to an equitable lien on their property to secure the note and that she was entitled to file a lien *lis pendens* on the property. Mrs. Twisdale further alleged that she was entitled to attorney's fees because the promissory note provided for such fees "incident to collection."

The trial court held a bench trial on June 6, 2006. Mrs. Twisdale presented the promissory note executed by the parties and claimed that because it was a signed writing, parol evidence was inadmissible to prove the parties' agreement. The promissory note stated that the Hunts agreed to pay $70,000 "for value received," and it set out the terms of the payment schedule. The trial court determined that the note clearly did not encompass the total agreement of the parties because it was merely a promise to pay, without mentioning the reasons for doing so, and that the parties had agreed to terms outside the writing of the note. Therefore, the court held that parol evidence was admissible as to the terms of the parties' agreement.

Mr. and Mrs. Hunt both testified that they had agreed to pay $10,000 plus inventory cost for the sale. Mrs. Twisdale and her husband both testified that the agreement was for $70,000 flat, with no set amount representing inventory or equipment. Mrs. Twisdale did explain, though, that at their first discussion, she told the Hunts that the inventory normally stayed between $50,000 and $60,000. She also said that she performed an inventory of the stock on the day of the sale and she counted somewhere between $50,000 to $60,000 in inventory, but she said that it was for her own tax purposes and not because she had a duty to provide the figures to the Hunts. Devon Thompson, who is Mrs. Hunt's daughter and Mrs. Twisdale's daughter-in-law, was subpoenaed to testify and was a reluctant witness who said she did not want to hurt either party. Devon said that she had discussed the sale with Mrs. Twisdale several times, and that her understanding of the agreement was that the Hunts agreed to pay $10,000 plus the inventory cost. The Hunts also presented their application for a license submitted to the Alcoholic Beverage Commission that provided the following information, in relevant part:

> 2. State amount of capital you propose to invest in the business[:] $ 10K + Inv. Cost
>
> . . .
>
> 5. If a loan was made for this investment, state from whom made and the amount[:] Cynthia Twisdale, 70K

. . .

9. If applicant is purchasing the stock and fixtures of a licensee now engaged in business, state the amount of the purchase price and the terms agreed upon, also attach a copy of Bill of Sale[:] 10K + Inv. Cost

Regarding the actual amount of inventory conveyed, Mrs. Twisdale maintained throughout the proceedings that there was $50,000 to $60,000 of inventory. When asked how she calculated the cost of the inventory, she said that her husband walked past the shelves calling out how many items there were and the retail price listed on the shelf, and she did the calculations. She testified that, as far as she knew, an inventory company would have used the same process. However, she later acknowledged that a buyer could not purchase inventory at retail price and sell it at retail price and make a profit.

Ms. Proctor, the bookkeeper, testified about her calculations in determining that the store had $30,500.16 in beginning inventory. She provided a document listing her exact figures and the calculator tape that reflected her calculations. She testified that there was no doubt in her mind that the store's beginning inventory cost $30,500.16. The Hunts also testified that, based upon their current knowledge from working in the liquor business since the sale, they estimated that the cost of the beginning inventory was about $30,000. Mrs. Hunt also testified that at some point, she had a discussion with a man who had been in the liquor business for 30 years, and he estimated that the amount of inventory they bought from Mrs. Twisdale only cost $30,000. Both Mr. and Mrs. Hunt testified that, in hindsight, they wished that they had performed an independent inventory of the stock they were buying. However, they said that they trusted Mrs. Twisdale and her calculations, and said that Mrs. Twisdale did not do anything that led them to believe that her representation was inaccurate.

Relevant to Mrs. Twisdale's claim for attorney's fees, the promissory note stated that "if not paid in full at the time and in the manner above specified, then the undersigned agree to pay all expenses and costs incident to collection, including reasonable attorney's fees . . . ." At trial, the Hunts did not dispute that Mrs. Twisdale was entitled to a lien on their residence to secure the promissory note. Mrs. Twisdale then testified that in addition to their failure to secure the deed of trust, the Hunts had also missed a payment on the note in February of 2005, which made all of their subsequent payments late. She testified that she had incurred $4500 in attorney's fees for responding to the Hunts' lawsuit and for filing the lien *lis pendens*, which she claimed was all related to her right to collect payment under the note, thus entitling her to attorney's fees.

The Hunts' bookkeeper, Ms. Proctor, testified that she knew that Mrs. Twisdale had received a payment each and every month and that every check had cleared through the bank. Mrs. Hunt also presented her check stubs that demonstrated that each monthly payment had been made, including the one in February of 2005.

Mrs. Twisdale moved for involuntary dismissal of all counts in the Hunts' complaint. The trial court granted the motion as to their claim under the Tennessee Consumer Protection Act, but denied the motion as to the other counts of mutual mistake or fraud.

In an order entered on July 26, 2006, the trial court set forth detailed findings of fact and conclusions of law as follows:

> IT IS, THEREFORE ORDERED, that the Court finds by clear and convincing evidence that there was a contract between the Plaintiffs and the Defendant for the purchase of the personal property and inventory known as C J Wine and Liquors of New Johnsonville, Tennessee and said consideration the Court finds the agreement was $10,000.00 plus the inventory cost. The Court finds by clear and convincing evidence that as to the inventory at the time of entering into this contract, namely, July 28, 2003, that Defendant, Cynthia June Twisdale was mistaken as to the amount of inventory she owned on July 28, 2003. Further that Cynthia June Twisdale communicated this incorrect amount to the Plaintiffs and said Plaintiffs relied upon the Defendants representation as to the amount of inventory on July 28, 2003 thus as to the Deed of Trust Note heretofore executed by the parties on June [sic] 28, 2003 there was a mutual mistake. The Court finds by clear and convincing evidence that there was a mutual mistake. The Court finds that the best evidence, as to the beginning inventory cost, was given by accountant Martha Proctor and said evidence was that at the time of the entering of said agreement on July 28, 2003 the Court finds that said inventory was in the amount of $30,500.16. Thus the Plaintiffs are indebted unto the Defendant beginning July 28, 2003 in the amount of $10,000 for personal property/equipment plus $30,500.16 for inventory giving a total indebtedness of $40,500.16. The Plaintiffs are given credit for all payment paid by the Plaintiffs unto the Defendant beginning August 2003 and continuing through June 6, 2006. The Court finds that the Plaintiffs have paid each and every payment under the original note from the beginning date of August 28, 2003 thru June 6, 2006. The Court finds that the Defendant is entitled to an equitable lien on the Plaintiffs property . . . and the lien *lis pendens* in place in this matter shall remain in force and effect to preserve said lien until pais [sic] in full and released. The Court finds that the Defendant is not entitled to reimbursement of attorneys fees thus both parties shall bear there [sic] respective attorneys fees. The cost of the cause is taxed against the Defendant for all of which let execution issue if necessary.

Mrs. Twisdale filed a notice of appeal on August 11, 2006.

II. ISSUES PRESENTED

The appellant has timely filed her notice of appeal and presents the following issues, as we perceive them, for review:

1. Whether the trial court erred in allowing parol evidence with regard to the parties' agreement.
2. Whether the trial court erred in reforming the contract based upon a finding of mutual mistake by clear and convincing evidence.
3. Whether the trial court erred in refusing to award reasonable attorney's fees to the appellant pursuant to the contract between the parties.

For the following reasons, we affirm the decision of the chancery court.

III. STANDARD OF REVIEW

On appeal, a trial court's factual findings are presumed to be correct, and we will not overturn those factual findings unless the evidence preponderates against them. Tenn. R. App. P. 13(d) (2006); ***Bogan v. Bogan***, 60 S.W.3d 721, 727 (Tenn. 2001). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. ***Watson v. Watson***, 196 S.W.3d 695, 701 (Tenn. Ct. App. 2005) (citing *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999)). We review a trial court's conclusions of law under a *de novo* standard upon the record with no presumption of correctness. ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993) (citing *Estate of Adkins v. White Consol. Indus., Inc.*, 788 S.W.2d 815, 817 (Tenn. Ct. App. 1989)).

IV. DISCUSSION

A. Parol Evidence

On appeal, Mrs. Twisdale first asserts that the trial court should have excluded any evidence as to the parties' negotiations and understanding of the agreement as improper parol evidence because their written agreement was reflected in the promissory note.

We recognize "[t]he general rule is that parol evidence is not admissible to contradict a written agreement." ***Worley v. White Tire of Tenn., Inc.***, 182 S.W.3d 306, 310 (Tenn. Ct. App. 2005) (quoting *Clayton v. Haury*, 224 Tenn. 222, 452 S.W.2d 865, 867-68 (1970)). Courts in Tennessee have long held that "parol evidence cannot be admitted to contradict or vary the terms or to enlarge or diminish the obligation of a written instrument or deed, *except on grounds of fraud, accident or mistake*." ***Id.*** One exception to the parol evidence rule is that extrinsic evidence is admissible to show fraud or mistake. ***Textron Fin. Corp. v. Powell***, No. M2001-02588-COA-R3-CV, 2002 WL

31249913, at *5 (Tenn. Ct. App. W.S. Oct. 8, 2002). The parol evidence rule has been considerably relaxed by the courts in order that fraud may be thwarted and mistakes corrected. ***Id.*** Thus, Mrs. Twisdale's contention that parol evidence is normally not allowed to contradict the terms of a written document is correct, except where there is alleged fraud or mistake, as here. In addition, Tenn. Code Ann. § 47-2-202 (2001) provides that the terms of a written instrument may be "explained or supplemented" by evidence of consistent additional terms unless the court finds that the writing was intended to be a complete and exclusive statement of the agreement. In this case, the trial judge found that the promissory note executed by the parties was not intended to be a complete statement of their agreement. Therefore, under either theory, evidence was admissible to explain the terms of the agreement and the alleged mistake or fraud.

When interpreting a plain and unambiguous contract, the meaning thereof is a question of law. ***Bratton v. Bratton***, 136 S.W.3d 595, 601 (Tenn. 2004). However, where parol evidence is required to interpret the contract, and that evidence is conflicting and may lead to different conclusions, the doubtful parts may be resolved by the fact-finder. ***Id.*** After hearing the testimony at trial and reviewing the documents presented, the trial court found that "the agreement was $10,000 plus the inventory cost," rather than a flat price of $70,000 as Mr. and Mrs. Twisdale had claimed.

"When the resolution of the issues in a case depends upon the truthfulness of witnesses, the trial judge, who has the opportunity to observe the witnesses in their manner and demeanor while testifying, is in a far better position than this Court to decide those issues." ***Machinery Sales Co., Inc. v. Diamondcut Forestry Prods., LLC***, 102 S.W.3d 638, 643 (Tenn. Ct. App. 2002). The weight, faith, and credit to be given to a witness's testimony lies, in the first instance, with the trier of fact, and the credibility accorded by the trial judge will be given great weight by the appellate court. ***Id.*** Here, the trial court's finding as to the terms of the agreement is supported by the testimony of the Hunts, the testimony of Devon Thompson, and the license application submitted to the Alcoholic Beverage Commission, and we find that the evidence does not preponderate against the court's finding that the parties agreed on a price of $10,000 plus inventory cost.

B. Mutual Mistake

Next, Mrs. Twisdale claims that the chancery court erred when it reformed the parties' contract upon a finding of mutual mistake. The trial court's order expresses its findings on this issue as follows:

> The Court finds by clear and convincing evidence that as to the inventory at the time of entering into this contract, namely, July 28, 2003, that Defendant, Cynthia June Twisdale was mistaken as to the amount of inventory she owned on July 28, 2003. Further that Cynthia June Twisdale communicated this incorrect amount to the Plaintiffs and said Plaintiffs relied upon the Defendants representation as to the amount of inventory on July 28, 2003 thus as to the Deed of Trust Note heretofore executed by the parties on June [sic] 28, 2003 there was a mutual mistake. The Court finds by clear and convincing

> evidence that there was a mutual mistake. The Court finds that the best evidence, as to the beginning inventory cost, was given by accountant Martha Proctor and said evidence was that at the time of the entering of said agreement on July 28, 2003 the Court finds that said inventory was in the amount of $30,500.16.

The chancellor's finding of a mutual mistake comes to this Court with a presumption of correctness unless the preponderance of the evidence is otherwise. ***Eatherly Constr. Co. v. HTI Mem'l Hosp.***, No. M2003-02313-COA-R3-CV, 2005 WL 2217078, at *13 (Tenn. Ct. App. Sept. 12, 2005); ***Columbia Rock Prods. Corp. v. Davis Group, Inc.***, Maury Equity No. 85-330-II, 1986 WL 227, at *2 (Tenn. Ct. App. M.S. May 21, 1986).

Courts do not concern themselves with the wisdom or folly of a contract, and we will not relieve parties from contractual obligations simply because they later prove to be burdensome or unwise. ***Sikora v. Vanderploeg***, 212 S.W.3d 277, 286 (Tenn. Ct. App. 2006). Contracts must be interpreted and enforced as written, even with unjust or harsh terms, if there is an absence of fraud or mistake. ***Quebecor Printing Corp. v. L & B Mfg. Co.***, 209 S.W.3d 565, 581 (Tenn. Ct. App. 2006). In cases involving alleged fraud or mistake, however, the law's strong policy favoring the enforcement of contracts as written must occasionally give way. ***Sikora***, 212 S.W.3d at 286. It is well settled that courts have the power to alter the terms of a contract where, at the time it was executed, both parties were operating under a mutual mistake of fact or law regarding a basic assumption underlying the bargain. ***Id.*** Courts can also modify the provisions of a contract where only one of the parties was operating under a mistake of fact or law if the mistake was influenced by the other party's fraud. ***Id.*** Thus, to begin with, "there must have been either a mutual mistake, or a mistake of one party influenced by the other's fraud." ***Williams v. Botts***, 3 S.W.3d 508, 509 (Tenn. Ct. App. 1999) (citing *McMillin v. Great S. Corp*., 63 Tenn. App. 732, 480 S.W.2d 152 (1972)).

In order for relief to be granted on the grounds of mistake, the mistake must have been mutual or fraudulent, it must have been material to the transaction, it must not be due to the complainant's negligence, and the complainant must show injury. ***Klosterman Dev. Corp. v. Outlaw Aircraft Sales, Inc.***, 102 S.W.3d 621, 632 (Tenn. Ct. App. 2002) (citing *Robinson v. Brooks*, 577 S.W.2d 207, 209 (Tenn. Ct. App. 1978)). A "mistake" is an act that would not have been done, or an omission that would not have occurred, but for ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or imposition. ***State ex rel. Mathes v. Gilbreath***, 17 Beeler 498, 181 S.W.2d 755, 757 (Tenn. 1944); ***Williams***, 3 S.W.3d at 509-510. A mistake must relate to a past or present fact, not an opinion as to the future result of a known fact. ***Collier v. Walls***, 51 Tenn. App. 467, 495, 369 S.W.2d 747, 760 (1962) (citing *Metro. Life Ins. Co. v. Humphrey*, 167 Tenn. 421, 426, 70 S.W.2d 361, 362 (1934)). "In mistake cases, a 'fact' is something that can be contemporaneously verified, i.e., independently and objectively established at the time of contracting." 21 Steven W. Feldman, *Tenn. Practice Series – Contract Law and Practice* § 6:45 (2006). Some examples of "material and vital" mistakes include mistakes as to the existence of title, location of boundaries, quantities and conditions of land being sold. ***Harris v. Spencer***, Williamson Ch. No. 21628, 1995 WL 413391, at *3 (Tenn. Ct. App. W.S. July 14, 1995) (citing *Isaacs v. Bokor*, 566 S.W.2d 532, 541 (Tenn. 1978); *Wilson v. Mid-State Homes, Inc.*, 384 S.W.2d 459 (Tenn. Ct. App. 1964); *Robinson v.*

Brooks, 577 S.W.2d 207, 209 (Tenn. Ct. App. 1978)). Although courts have stated that the mistake must not be due to the complainant's own negligence, *see, e.g.*, ***Klosterman***, 102 S.W.3d at 632, "reformation is denied only in 'extreme cases' where a party's fault 'amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing.'" ***Sikora*** 212 S.W.3d at 290 (citing Restatement (Second) of Contracts § 157 & cmt. *a*, at 416). Mere inattention, as the word is used in common parlance, is not an absolute bar to reformation under Tennessee law. ***Id.*** at 289. Often times, a party could have avoided the mistake by exercising reasonable care, and if mere negligence barred recovery, the availability of relief for mutual mistake would be severely circumscribed. *See* ***id.***, n.15 (citing Restatement (Second) of Contracts § 157 cmt. *a*, at 416). Finally, for the mistake to be remediable in equity, it must have caused a loss to the party complaining, which the other party ought not in reason and conscience to take advantage of. ***Anderson v. Weaver***, No. W1999-01714-COA-R3-CV, 2000 WL 33975583, at *3 (Tenn. Ct. App. Apr. 17, 2000) (citing *Gibson's Suits in Chancery* § 986 (5th ed. 1956)).

Equity will grant relief for mistake "not only when the mistake is expressly proved, but also when it is implied from the nature of the transaction." ***Klosterman***, 102 S.W.3d at 631-32 (quoting *Robinson v. Brooks*, 577 S.W.2d 207, 208 (Tenn. Ct. App. 1978)). However, if based on mutual mistake, the intent of both parties must be clear and must be the same. ***Russell v. Security Ins., Inc.***, No. 01A01-9803-CV-00135, 1999 WL 74787, at *1 (Tenn. Ct. App. M.S. Feb. 18, 1999). The mistake must be shown by "clear, cogent, convincing evidence." ***Lane v. Spriggs***, 71 S.W.3d 286, 290 (Tenn. Ct. App. 2001) (citing *Dixon v. Manier*, 545 S.W.2d 948, 950 (Tenn. Ct. App. 1976)).

Applying these principles to the case at bar, we find that the trial court did not err in reforming the parties' contract for mutual mistake. As previously discussed, the evidence supports the trial court's finding that the terms of the parties' agreement were for the Hunts to pay $10,000 plus the inventory cost. The inventory cost is a fact that could be independently and objectively established, and there is ample evidence to support the trial court's conclusion that the actual cost of the inventory was only $30,500.16. The bookkeeper explained her calculations in detail and her documentation is in the record before us. In addition, the Hunts testified as to the cost of the inventory based upon the knowledge they had acquired in the liquor business since the sale, and based upon the estimation of another experienced liquor salesman who observed their inventory. Furthermore, there was evidence to suggest that Mrs. Twisdale's husband was communicating the retail prices of the inventory to her when she performed her calculations, not the cost of such inventory. Mrs. Twisdale then calculated the cost of the inventory to be $60,000 and communicated this amount to the Hunts. Therefore, at the time of executing the promissory note, both parties were operating under a mutual mistake of fact as to the total cost of the inventory based upon Mrs. Twisdale's miscalculation.[1]

[1] If Mrs. Twisdale knew the true cost of the inventory and misrepresented it to the Hunts, she would be guilty of fraud, which would likewise justify reformation or rescission of the contract. However, the trial judge based his decision on mutual mistake after he explained, "I don't think she did anything intentional. I believe she was mistaken . . . ." We need not address this issue because we agree with the trial court's finding of mutual mistake. It is also unnecessary for us to address the Hunts' Tennessee Consumer Protection Act claim because they did not challenge the trial court's ruling on appeal.

On appeal, Mrs. Twisdale insists that the Hunts' "inattention or negligence" in failing to independently verify the cost of the inventory before the sale should bar their recovery. We disagree. As the court clarified in ***Sikora***, 212 S.W.3d at 290, reformation should be denied only in extreme cases where a party's fault amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing. In this case, the trial judge noted his observation of the parties' "close relationship" and that "because of these parties' unique situation, her daughter is married to her son, they took her word for it." Mr. Hunt said that he thought of Mrs. Twisdale as a friend. Mr. Hunt also explained that they specifically waited to execute the promissory note until after Mrs. Twisdale ceased operating her store and inventoried the remaining stock, rather than relying on her initial estimations of the cost of the inventory. Mrs. Twisdale had worked in the liquor business for many years, and Mr. and Mrs. Hunt both testified that she did nothing to cause them to doubt her calculation or to lead them to believe that they should have someone independent to perform an inventory. Any negligence on the part of the Hunts was not so gross or excessive as to render it inequitable for them to seek reformation based upon a mutual mistake. The parties' mutual mistake materially affected the transaction, resulting in injury to the Hunts, and the trial court did not err in reforming the contract to reflect the parties' intentions.[2]

C. Attorney's Fees

The final issue presented by Mrs. Twisdale on appeal is whether the trial court erred in denying her request for attorney's fees pursuant to the provision in the promissory note. After the note set forth the payment terms, it provided that "if not paid in full at the time and in the manner above specified, then the undersigned [the Hunts] agree to pay all expenses and costs incident to the collection, including reasonable attorney's fees, the same to be added to and become a part of this note and judgment." Mrs. Twisdale claimed that all of her involvement in the present case, such as defending against the mutual mistake and fraud claims, was related to her right to receive payments under the promissory note and therefore she was entitled to recover her attorney's fees. Mrs. Twisdale sought an equitable lien in her counter-complaint, but the Hunts agreed before trial that she was entitled to the lien. Mrs. Twisdale did not allege any payment deficiencies in her counter-complaint, but she testified at trial that the Hunts had missed one payment. However, the Hunts presented evidence to demonstrate that all payments were made on time, and the trial court specifically found that each and every payment had been made.

The American Rule is firmly established in Tennessee and provides that litigants must pay their own attorney's fees absent a statute or agreement providing otherwise. ***State v. Brown &***

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[2] The decision of whether to grant rescission or reformation rests in the sound discretion of the trial court and depends on the facts of each case. ***Vakil v. Idnani***, 748 S.W.2d 196, 199 (Tenn. Ct. App. 1987). Reformation is appropriate if it accomplishes what was intended by the parties without putting either party at an unfair advantage. ***Id.*** at 200 (citing *Blazer Fin. Servs., Inc. v. Diddle*, 648 S.W.2d 257, 259 (Tenn. Ct. App. 1983)). The court should exercise its discretion to grant rescission sparingly. ***Id.*** at 199. Rescission will be permitted only for such mistakes as are so substantial and fundamental as to defeat the object of the parties in making the agreement. ***Loveday v. Cate***, 854 S.W.2d 877, 879 (Tenn. Ct. App. 1992) (citing 17A C.J.S. *Contracts* § 422(1)). Neither party in this case suggested on appeal that the contract should have been rescinded rather than reformed.

Williamson Tobacco Corp., 18 S.W.3d 186, 194 (Tenn. 2000) (citing *John Kohl & Co. v. Dearborn & Ewing*, 977 S.W.2d 528, 534 (Tenn. 1998)). "Courts may enforce provisions in contracts that expressly allow a prevailing party, or otherwise described party, to recover its attorney fees incurred in disputes over the contract." ***Segneri v. Miller***, No. M2003-01014-COA-R3-CV, 2004 WL 2357996, at *6 (Tenn. Ct. App. Oct. 19, 2004) (citing *Pullman Standard, Inc. v. Abex Corp*., 693 S.W.2d 336, 338 (Tenn. 1985); *Pinney v. Tarpley*, 686 S.W.2d 574, 581 (Tenn. Ct. App. 1984)). However, the award of such fees is limited to the situation agreed to by the parties in the language of the contract provision. ***Id.*** In determining whether fees can be awarded under the circumstances of a case, the language of the fee provision is subject to the usual rules of contract interpretation. ***Id.*** The trial court's interpretation is reviewed *de novo* as a question of law. ***Id.***

We affirm the trial court's denial of attorney's fees because we find no contractual basis providing for such fees in this case. The fee provision only provided that "if not paid in full at the time and in the manner above specified," the Hunts would pay attorney's fees "incident to the collection." Here, the Hunts have made their payments in full at the time and manner specified, and Mrs. Twisdale has not incurred any fees incident to collection. A plain reading of this provision clearly indicates that it does not encompass all fees incurred in any action related to the contract. A broad provision could have been included if the parties had intended such a result. *See, e.g.*, ***Segneri***, 2004 WL 2357996, at *6 (contract provided for reimbursement of fees that were incurred "to enforce or defend any rights and remedies"). We must enforce the provision as written, and it does not provide for recovery of attorney's fees in this case.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the chancery court. Costs of this appeal are taxed to the appellant, Cynthia June Twisdale, and her surety, for which execution may issue if necessary.

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ALAN E. HIGHERS, JUDGE